

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

IN RE:) Chapter 11
) Case No. 01-01139 (KG)
W.R. GRACE & CO., et al.,) (Jointly Administered)
)
 Reorganized Debtors.) Del. D.Ct. Appeal 16-799 LPS
)
) **Re: Docket No. 32781**
_____)

**APPELLANT'S STATEMENT OF ISSUES ON APPEAL AND
DESIGNATION OF RECORD ON APPEAL**

STATEMENT OF ISSUES

1. Whether the Bankruptcy Court erred in denying Anderson Memorial Hospital's Motion for Class Certification.
2. Whether the Bankruptcy Court erred in denying Anderson Memorial Hospital's Motion for Reconsideration of the Order denying class certification.
3. Whether the Bankruptcy Court erred in finding that the only class members who could be considered under the numerosity requirement of F.R.C.P. 23 were those who had filed an authorized individual proof of claim prior to the bar date.
4. Whether the Bankruptcy Court erred in refusing to recognize the class proofs of claim filed by Anderson Memorial Hospital.
5. Whether the Bankruptcy Court erred in finding that the Court had ordered class representatives to seek permission prior to filing a class proof of claim.
6. Whether the Bankruptcy Court erred in determining that the Grace Chapter 11 Plan bars post-bar-date claims from being included in the Anderson Memorial Hospital Class.

DESIGNATION OF RECORD

A. Bankruptcy Court Docket 01-01139-KG

<u>Date</u>	<u>Docket No.</u>	<u>Description</u>
04/02/2001	6	Grace's Informational Brief
06/27/2001	586	Debtors' Motion for Entry of Case Management Order for Establishment of Bar Date, Approval of Proof of Claim Forms and Approval of Notice Program
06/27/2001	587	Debtors' Memorandum in Support of Motion for Entry of Case Management Order for Establishment of Bar Date, Approval of Proof of Claim Forms and Approval of Notice Program
11/10/2001	1106	Debtors' Consolidated Reply in Support of their Motion for Entry of Case Management Order for Establishment of Bar Date, Approval of Proof of Claim Forms and Approval of Notice Program
02/05/2002	1650	Transcript of Hearing held January 29, 2002
02/12/2002	1664	Debtors' Revised Motion as to all Personal Injury Claims for Entry of Case Management Order for Establishment of Bar Date, Approval of Proof of Claim Forms and Approval of Notice Program
02/12/2002	1665	Debtors' Revised Motion as to All Non-Asbestos Claims, Asbestos Property Damage and ZAI Claims for Entry of Case Management Order, Establishment of a Bar Date, Approval of the Proof of Claim Forms and of the Notice Program
02/15/2002	1677	Notice of Filing Debtors' Brief Regarding Bar Date and Class Notice
03/11/2002	1793	Transcript of Hearing held February 25, 2002
03/13/2002	1797	Debtors' Letter Response (from David Bernick to Judge Fitzgerald regarding ZAI Class Plaintiff's Motion to Allow Class Proofs of Claim - DI 1788 filed 3/12/02)

03/27/2002	1912	Transcript of Hearing held March 18, 2002
04/12/2002	1926	Debtors' Notice of Filing Revised Bar Date Notice Plan, Proof of Claim Forms and Related Material
04/12/2002	1927	Debtors' Notice of Filing Exhibit Tabs C & D to Revised Bar Date Notice Plan, Proof of Claim Forms and Related Materials
04/22/2002	1960	Claims Bar Date Notice Order
04/22/2002	1963	Order Establishing a Bar Date for Filing Proof of Claims
05/06/2002	2019	Asbestos Property Damage Committee's Motion for Leave to Appeal the Bar Date Order to the District Court
05/13/2002	2057	Transcript of Hearing held on April 22, 2002
05/16/2002	2059	Debtors' Response in Opposition to Asbestos Property Damage Committee's Motion for Leave to Appeal the Bar Date Order to the District Court
06/21/2002	2274	Asbestos Property Damage Committee's Motion to Amend Bar Date Order
07/09/2002	2351	Affidavit/Declaration of Service re: Claims Bar Date Notice Materials and Grace Non-Asbestos Proof of Class Form
07/16/2002	2382-2392	Declarations of Service re Claims Bar Date Notice Materials with exhibits
08/05/2002	2502-2503	Transcript of Hearing held July 22, 2002
08/16/2002	2555	Order of the District Court Denying Leave to Appeal Bar Date Order
09/23/2002	2745	Amended Order Setting Bar Date for Asbestos PD Claims
10/02/2002	2779	Transcript of Hearing Held on September 23, 2002
10/10/2003	4564	Notice of Amended Declaration of Service re: Docket No. 2382

10/13/2003	4575	W.R. Grace's Motion to Appoint Personal Injury Future Claimants Representative
03/29/2004	5374	Transcript of Hearing held on March 22, 2004
06/21/2004	5860	Status Report of the Official Committee of Asbestos Property Damage Claimants
06/22/2004	5864	Addendum to Status Report of the Official Committee of Asbestos Property Damage Claimants
05/04/2005	8364	Transcript of Hearing held on April 25, 2005
07/18/2005	9008	Debtors' Motion for Limited Waiver to Permit Filing Omnibus Objection to 2,938 Unauthorized Claims Filed by Speights & Runyan
09/01/2005	9311	Debtors' Thirteenth Omnibus Objection to 2,937 Unauthorized Claims filed by Speights & Runyan
09/01/2005	9315	Debtors' Fifteenth Omnibus Objection to Property Damage Claims
09/07/2005	9349	Transcript of Hearing held August 29, 2005
09/23/2005	9501	Order Granting Certain Relief and Directing Certain Discovery with Respect to Speights & Runyan
10/21/2005	9843	Stipulation between W.R. Grace and Speights & Runyan regarding the withdrawal of asbestos property damage claims lacking proof of W.R. Grace Product Identification
10/21/2005	10001	Speights & Runyan's Response to Debtors' Brief in Support of 13 th Omnibus Objection Seeking the Disallowance and Expungement of 1900 Claims filed by Anderson Memorial Hospital
10/21/2005	10014	Anderson Memorial Hospital's Motion for Class Certification
11/10/2005	11025	Transcript of Hearing held on October 31, 2005 before Judge Fitzgerald

11/10/2005	11035	Scheduling Order Regarding Debtors' Fifteenth Omnibus Objection to Claims
11/15/2005	11080	Order Disallowing and Expunging Anderson Memorial-Based Asbestos Property Damage Claims
11/01/2005	10961	Order (Bench Filed) For the Withdrawal and Expungement of 1495 Asbestos Property Damage Claims
12/02/2005	11245	W.R. Grace's Brief in Opposition to Anderson Memorial Hospital's Motion for Class Certification
12/13/2005	11335	Anderson Memorial's 30(b)(6) Notice of Deposition and Request to Produce to W.R. Grace re: Debtors' knowledge of individualized Notice packages
12/13/2005	11336	Anderson Memorial's 30(b)(6) Notice of Deposition to Request to Produce to W.R. Grace re: Debtors' knowledge regarding property damage claims and class action proceedings brought by Anderson Memorial through Speights & Runyan
12/13/2005	11337	Anderson Memorial's 309b)(6) Notice of Deposition and Request to Produce to W.R. Grace re: Debtors' knowledge of the address, building, location or owners of buildings containing WRG asbestos-containing materials
12/19/2005	11365	W.R. Grace's Motion for Protective Order Against Anderson Memorial Hospital's Request for 30(b)(6) Depositions and Documents
12/22/2005	11408	Modified Scheduling Order Regarding Certain of Debtors' Fifteenth Omnibus Objections to Claims
12/22/2005	11413	Anderson Memorial Hospital's Motion for Limited Relief from Automatic Stay
12/22/2005	11428	Debtors' Brief in Support of Fifteenth Omnibus Objection to Asbestos Property Damage Claims
01/13/2006	11547	W.R. Grace's Brief Describing the Purpose that Publication Notice Served in the Debtors' Bar-Date-Notice Program

01/20/2006	11594	Speights & Runyan's Sur-Reply in Opposition to Debtors' Thirteenth and Fifteenth Omnibus Objections
01/24/2006	11621	Debtors' Sur-Reply in Support of the Disallowance of 71 Claims for which Speights & Runyan has not Established Authority to File as of the March 31, 2003 Bar Date
01/25/2006	11627	Anderson Memorial's Reply Memorandum to the Debtors' Brief Regarding the Notice Program and in Support of Class Certification
02/03/2006	11707	Transcript of Hearing held January 26, 2006
02/03/2006	11709	Anderson Memorial Hospital's Further Memorandum in Opposition to the Debtors' Thirteenth Omnibus Objection: Ratification of Authority by Claimants
02/07/2006	11729	Transcript of Hearing held January 25, 2006
02/27/2006	11909	Transcript of Hearing held February 21, 2006
04/05/2006	12206	Affidavit of Katherine Kinsella
06/16/2006	12657	Order Granting Application of Speights & Runyan for Final Approval and Allowance of Compensation and Reimbursement of Expenses Solely Related to Services Rendered in the Sealed Air and Fresnius Adversary Actions
08/29/2006	13077	Transcript of Hearing held on August 21, 2006
10/03/2006	13342	Transcript of Hearing held on September 25, 2006
10/24/2006	13462	Order Approving Debtors' Motion for Leave to File a Reply in Support of Its Motion for Protective Order Against Anderson Memorial's Request for 30(b)(6) Depositions and Documents
11/06/2006	13572	Transcript of Hearing held October 23, 2006
10/11/2006	13388	Order for Limited Relief from Automatic Stay of Anderson Memorial

10/13/2006	13406	Amended Order Setting Various Deadlines Regarding Objections to Asbestos PD Claims
11/06/2006	13572	Transcript of October 23, 2006 Omnibus Hearing
11/14/2006	N/A	Record obtained from the South Carolina Circuit Court in <i>Anderson v. W.R. Grace & Co., et al.</i> , 92-CP-25-279
12/04/2006	13894	Transcript of November 20, 2006 Omnibus Hearing
12/08/2006	13980	Anderson Memorial Hospital's Motion to Compel Deposition of Debtors' Records Custodian with attachments
01/03/2007	14206	Transcript of Omnibus Hearing held December 19, 2006
02/01/2007	14465	Transcript of Omnibus Hearing held January 23, 2007
02/07/2007	14504	Order Granting Anderson Memorial's Motion to Compel Deposition of Debtors' Records Custodian
02/27/2007	14693	W.R. Grace's Objection to Central Wesleyan's Class Claim filed by Berger & Montague and Richardson, Westbrook & Brockman
03/14/2007	14860	Central Wesleyan College's Response to Debtors' Objection to Certain Claims filed by Berger & Montague and Richardson, Westbrook & Brockman
04/09/2007	15117	Transcript of Hearing held on April 2, 2007
04/11/2007	15155	W. R. Grace's Notice of Service of Discovery Regarding Debtors' Supplemental Responses and Objections to Claimant Anderson Memorial Hospital's Interrogatories
04/13/2007	15172	Anderson Memorial Hospital's Motion to Extend Deadline to File Schedules or Provide Required Information
04/17/2007	15209	Memorandum Opinion Disallowing and Expunging 71 Claims filed by Speights & Runyan
04/17/2007	15210	Order Disallowing and Expunging 71 Claims filed by Speights & Runyan

05/07/2007	15528	Order Resolving Certain Claims Filed by Berger & Montague and Richardson, Patrick, Westbrook & Brickman
05/08/2007	15625	W.R. Grace's Motion for Leave to Amend Their Objections to Certain Property Damage Claims
05/18/2007	15697	Official Committee of Asbestos Property Damage Claimants' Objection to Debtors' Motion for Leave to Amend Their Objections to Certain Property Damage Claims
05/18/2007	15701	Canadian Claimants' Response to Debtors' Motion for Leave to Amend Their Objections to Certain Property Damage Claims
05/23/2007	15786	Transcript of Hearing held May 8, 2007
06/04/2007	15948	Transcript of Hearing held May 21, 2007
06/07/2007	15988	Transcript of Hearing held May 30, 2007
06/27/2007	16169	Order Concerning Debtors' Motion for Leave to Amend Their Objections to Certain Property Damage Claims
07/30/2007	16422	Transcript of Certification Hearing held on July 5, 2007 (including Claimant exhibits 116-122; 125-127; 133-134; 137-138; 140-142B; 147, 149; 151)
07/31/2007	16449	Transcript of Hearing held June 25, 2007
08/10/2007	16530	The Worldwide Class: Anderson Memorial's Final Brief in Support of Class Certification of the Putative Non-South Carolina Class
08/10/2007	16532	The South Carolina Class: Anderson Memorial's Final Brief in Support of Class Certification of the South Carolina Class
08/10/2007	16533	Anderson Memorial Hospital's Memorandum of Law Regarding Class Certification Evidentiary Issues
08/10/2007	16540	Debtors' Post-Hearing Brief in Opposition to Anderson Memorial's Class Certification Motion

01/03/2008	17743	Transcript of December 17, 2007 Omnibus Hearing
05/29/2008	18821	Judge Fitzgerald's Memorandum Opinion Denying Anderson Memorial's Motion for Class Certification
03/06/2008	18233	Transcript of Hearing held on February 25, 2008
06/17/2008	18934	Order Establishing October 31, 2008 as the Proof of Claim Bar Date for Zonolite Attic Insulation Claims and Approving the Related Proof of Claim Form, Bar Date Notices, and Notice Program
07/29/2008	19187	Transcript of Hearing held on July 22, 2008 before Judge Fitzgerald
09/08/2008	19492	Judge Buckwalter's Order of September 4, 2008 Denying Anderson Memorial Hospital's Motion for Leave to Appeal (Copy from District Court)
09/19/2008	19580-21	Exhibit 21 to Exhibit Book filed by W.R. Grace & Co., et al. - Schedule of Unresolved Asbestos PD Claims
10/28/2008	19891	Transcript of Hearing held on October 20, 2008
11/10/2008	19987	Anderson Memorial Hospital's Status Report re Class Proofs of Claim #9911 and #9914 with attachments
11/20/2008	20111	Debtors' Status Report Regarding Anderson Memorial Hospital's Class Proofs of Claim #9911 and #9914
12/19/2008	20304-14 pgs. 13-26	Exhibit 25 - CMO for Asbestos PD Claims in Exhibit Book Supplements attached to Certification of Counsel Regarding Further Amendments to the Disclosure Statement and Plan of Reorganization:
01/16/2009	20535	Order re Revised Order and Notice re ZAI Motion for Preliminary Approval of ZAI Class Settlement and Provisional Class Certification
11/14/2008	20032	Judge Buckwalter's Order of November 13, 2008 Denying Anderson Memorial Hospital's Motion to Reconsider Denial of Motion for Leave to Appeal

02/27/2009	20873	Disclosure Statement for the First Amended Joint Plan of Reorganization
02/27/2009	20874-2	Property Damage Trust Agreement (Exhibit 2 of Exhibit Book to First Amended Joint Plan of Reorganization)
02/27/2009	20874-24	Exhibit 25 (PD CMO) to Exhibit Book to the First Amended Joint Plan of Reorganization
02/28/2009	20877	Property Damage Case Management Order (Exhibit 25 of Exhibit Book to First Amended Joint Plan of Reorganization)
03/16/2009	21033	Notice of Service/Notice of Filing Debtors' Property Damage Expert Report with attached Declaration of Denise Neumann Martin
04/13/2009	21257	Order Regarding Status of Anderson Memorial Hospital's Class Proofs of Claim
04/13/2009	21259	Deposition of Richard C. Finke taken on March 30, 2009 and exhibits
04/27/2009	21406	Order Granting the Relief Sought in Debtors' Objection to Anderson Memorial Hospital's ZAI Class Proof of Claim
07/24/2009	22628	W.R. Grace's Notice of Filing Report of Denise Neumann Martin
08/24/2009	22948	Brief/Deposition Designations filed by Anderson Memorial Hospital including Deposition of Jay W. Hughes, Jr. taken June 11, 2009
09/04/2009	23177	Notice of First Set of Modifications to Joint Plan of Reorganization with attachments
10/29/2009	23619	Amended Transcript of Hearing Held October 13, 2009
04/22/2010	24657	First Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code of W.R. Grace & Co., et al., The Official Committee of Asbestos Personal Injury Claimants, The Asbestos PI Future Claimants' Representative and The Official Committee of Equity Security Holders as Modified Through March 19, 2010

12/08/2010	25881	Notice of Fifth Set of Modifications to Joint Plan of Reorganization with attachments
01/31/2011	26154	Memorandum Opinion Regarding Objections to Confirmation of First Amended Joint Plan of Reorganization and Recommended Supplemental Findings of Fact and Conclusions of Law
01/31/2011	26155	Recommended Findings of Fact, Conclusions of Law and Order Regarding Confirmation of First Joint Plan of Reorganization as Modified Through December 23, 2010
02/15/2011	26289	Order Clarifying Memorandum Opinion and Order Confirming Joint Plan through December 23, 2010
02/21/2011	26368-1	Confirmed Joint Plan of Reorganization as of December 23, 2010 (Plan Definitions at pages 11-50)
02/21/2011	26368-22	Unresolved Asbestos PD Claims Schedule (Plan Exhibit 21)
02/21/2011	26368-27	PD Case Management Order (Plan Exhibit 25)
02/21/2011	26368-35	Amendment to the Amended & Restated CDN ZAI Minutes of Settlement (Plan Exhibit 35)
01/28/2014	31657-24	Updated Case Management Order for Class 7A Asbestos PD Claims (Plan Ex. 25)
02/13/2014	31732	Notice of Effective Date of the First Amended Joint Plan of Reorganization
03/05/2014	31812	Anderson Memorial Hospital's Motion to Alter or Amend Order Denying Motion for Class Certification and for Entry of Scheduling Order and Granting Related Relief and attachments
05/29/2014	32233	Reorganized Debtors' Brief in Opposition to Anderson Memorial Hospital's Motion to Alter or Amend Order Denying Class Certification with attachments
06/25/2014	32259	Judge Fitzgerald's Rule 706 Expert Report

10/07/2014	32420	Declaration of Scott L. Baena in Support of Request for Fee Enhancement for Services in Connection with Fraudulent Transfer Litigation against Sealed Air Corporation, et al.
02/04/2015	32503	Anderson Memorial Hospital's Reply in Support of Motion to Alter or Amend Order Denying Motion for Class Certification and attachments
04/17/2015	32552	Transcript of Hearing held on April 15, 2015 before Judge Carey
05/05/2015	32560	Order Regarding Anderson Memorial Hospital's Discovery Request
06/08/2015	32571	Order Approving Stipulation for Briefing Schedule and Hearing Date for Anderson Memorial Hospital's Motion to Alter or Amend Order Denying Motion for Class Certification
09/08/2015	32624	Anderson Memorial Hospital's Brief in Support of Motion for Class Certification
09/08/2015	32625	Anderson Memorial Hospital's Appendix in Further Support of Motion for Class Certification
11/23/2015	32638	PD Future Claimants' Rep's Brief in Support of Certification
01/13/2016	32650	W.R. Grace's Response in Opposition to Anderson Memorial Hospital's Motion to Alter or Amend Order Denying Class Certification with attachments
03/01/2016	32660	Order Approving Third Amended Stipulation for Briefing Schedule and Hearing Date for Anderson Memorial Hospital's Motion to Alter or Amend Order Denying Motion for Class Certification
04/11/2016	32671	Anderson Memorial Hospital's Reply to Grace's Response in Opposition to AMH's Motion to Alter or Amend Order Denying Class Certification
06/23/2016	32707	Transcript of Hearing held on June 15, 2016 before Judge

Carey

08/25/2016	32771	Judge Kevin J. Carey's Opinion Denying Anderson Memorial Hospital's Motion to Alter or Amend Order Denying Motion for Class Certification
08/25/2016	32772	Judge Kevin J. Carey's Order Denying Anderson Memorial Hospital's Motion to Alter or Amend Order Denying Motion for Class Certification

B. Del. Bankruptcy No. 01-2471, *In re: United States Mineral Products Co.*

<u>Date</u>	<u>Docket No.</u>	<u>Description</u>
11/30/2005	3282	Confirmation Order and Confirmed Plan of Reorganization

C. Del. Bankruptcy Adv. No. 01-08810 (ZAI Adversary)

<u>Date</u>	<u>Docket No.</u>	<u>Description</u>
11/16/2001	1	Complaint
01/28/2014	13	Stipulation of Dismissal with Prejudice
01/29/2014	14	Stipulation and Order of Dismissal with Prejudice

D. Del. Bankruptcy Case No. 01-2094, *In re: United States Gypsum Co.*

<u>Date</u>	<u>Docket No.</u>	<u>Description</u>
06/16/2006	11688	Confirmation Order and Confirmed Plan of Reorganization

E. Del. Bankruptcy Case No. 01-10578, *In re: Federal Mogul*

<u>Date</u>	<u>Docket No.</u>	<u>Description</u>
11/08/2007	13674	Confirmation Order and Confirmed Plan of Reorganization

F. Del. D.Ct., Case No. 08-118

<u>Date</u>	<u>Docket No.</u>	<u>Description</u>
10/01/2008	13	Debtors' Brief in Opposition to Anderson Memorial's

Motion to Reconsider Denial of Motion for Leave to Appeal the Bankruptcy Court's Order Denying Class Certification or, In The Alternative, to Certify This Matter to the United States Court of Appeals for the Third Circuit, to Remand this Matter to the Bankruptcy Court for Discovery, and/or to Conduct a Status Conference

G. 3rd Circuit Court of Appeals, Case No. 08-1044

<u>Date</u>	<u>Docket No.</u>	<u>Description</u>
05/21/2008	00311887811	Brief of Debtors-Appellees W.R. Grace & Co., et al.

H. 3rd Circuit Court of Appeals, Case No. 08-4829

<u>Date</u>	<u>Docket No.</u>	<u>Description</u>
01/13/2009	00314699912	Debtors Statement Regarding Jurisdiction and Motion to Dismiss Appeal
01/13/2009	00314699932	Appellant Anderson Memorial Hospital's Statement of Appellate Jurisdictional Authority
01/28/2009	00315534273	Appellant Anderson Memorial Hospital's Brief in Opposition to Debtors' Motion to Dismiss
01/30/2009	00315657978	Debtors' Response to "Appellant's Brief in Opposition to Debtors' Motion to Dismiss"

I. 3rd Circuit Court of Appeals, Case No. 12-1402 (Confirmation Appeal)

<u>Date</u>	<u>Docket No.</u>	<u>Description</u>
01/17/2013	003111139495	Brief of Appellee Judge Alexander M. Sanders, Jr., Property Damage Future Claimants' Representative, in Opposition to Opening Brief of Appellant Anderson Memorial Hospital
01/17/2013	00311140043	Appellee W.R. Grace's Brief in Response to Opening Brief of Anderson Memorial Hospital

J. Del. D.Ct., Case No. 09-421

<u>Date</u>	<u>Docket No.</u>	<u>Description</u>
10/02/2013	5, 6	Appellant Anderson Memorial's Motion to Set Aside Oral Termination Order signed by Judge Ronald L. Buckwalter on 9/23/2013 and Supporting Memorandum

K. Del. D. Ct., Case No. 11-199-RLB

<u>Date</u>	<u>Docket No.</u>	<u>Description</u>
05/26/2011	75	Brief of Alexander M. Sanders, Jr., the Legal Representative for Future Asbestos-Related Property Damage Claimants and Holders of Demands
05/25/2011	86	Appellees/Debtors' Main Brief
06/08/2012	219	Response of the Legal Representative for Future Asbestos-Related Property Damage Claimants and Holders of Demands to Anderson Memorial Hospital's Rule 60, Fed. R. Civ. P. Motion
06/08/2012	220	Appellee/Debtors' Response in Opposition to Anderson Memorial Hospital's Motion for Relief from Order and Memorandum Opinion Affirming Confirmation Order
06/29/2012	229	Surreply of the Legal Representative for Future Asbestos-Related Property Damage Claimants and Holders of Demands to Anderson Memorial Hospital's Rule 60, Fed. R. Civ. P. Motion

Certification Regarding Transcripts

Pursuant to Rule 8009(b)(1)(A) of the Federal Rules of Bankruptcy Procedure, the Appellant hereby files this certificate stating that the Appellant is not ordering any transcripts. All transcripts have been prepared and are filed on the docket and are designated in the foregoing designation of the record.

Dated: September 22, 2016

FERRY JOSEPH, P.A.

/s/ Theodore J. Tacconelli

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